No. 186

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IN THE

Supreme Court of the United States

October Term—1952

FLORENCE KRUMM ROBISON,

Plaintiff-Respondent,

vs.

EDWARD GEORGE ROBISON,

Defendant-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY WITH BRIEF IN SUPPORT THEREOF

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IN THE

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FLORENCE KRUMM ROBISON,

Plaintiff-Respondent.

vs.

EDWARD GEORGE ROBISON,

Defendant-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Edward George Robison, defendant-appellant, petitions for a writ of certiorari to review a decision of the Supreme Court of New Jersey, affirming the decree of the Superior Court of New Jersey, Chancery Division of Essex County, which found that the latter court was vested with power to alter, change and amend a decree of alimony of the Circuit Court of the Eleventh Judicial Circuit of Florida.

Statement of Matter Involved

The case involves the right of the courts of a foreign state to change an award of alimony ordered in a divorce decree by a state which has obtained jurisdiction of the parties and the subject matter.

The plaintiff-respondent filed a suit for divorce against the petitioner in the Circuit Court of Dade County, Florida (R. 25a).* The defendant-petitioner appeared and filed an answer (R. 36a). The Florida Court rendered a final decree which adjudged that the court had jurisdiction of the parties and the subject matter; that the bonds of matrimony be dissolved; that the defendant (petitioner herein) pay to the plaintiff (respondent herein), as alimony, the sum of $28,600.00 in the following manner: e.g. $4,000.00 in cash three days after the filing of the decree and $200.00 monthly on the first day of each and every month. The decree was entered in 1945 (R. 10a). The defendant-petitioner forthwith paid the $4,000.00 and has ever since paid the monthly sums of $200.00 (R. 23a).

The plaintiff-respondent in 1951 brought suit in New Jersey to secure increased monthly payments (R. 1a). She recited the final decree of divorce but asserted that the agreement for support, which was merged into the decree, is not binding because it is subject to modification by the court of Florida (R. 21a-20 to 30). The plaintiff-respondent then asked the New Jersey Court to adjudicate the cause upon the ground that jurisdiction was given to the New Jersey Court under New Jersey Statute R.S. 2:50-37. This statute briefly provides that after a judgment of divorce, whether obtained in New Jersey or elsewhere, the court may make such order touching the alimony of the wife as the circumstances of the parties and the nature of the case shall render fit, reasonable and just (Appendix C at p. 18 herein). The defendant-petitioner moved to dismiss the action upon the ground that the Florida decree was protected by the full faith and credit clause of the United States Constitution; that since the plaintiff-respondent relied upon the validity of the Florida decree severing the bonds of matrimony, she was bound

* Refers to printed Record filed in this Court and accompanying this Petition and Brief in support thereof.

by the entire decree and could not challenge a portion thereof awarding alimony. The defendant-petitioner further contended that the Florida decree of divorce awarding alimony was *res adjudicata*, had been rendered by a court of competent jurisdiction and was subject to the full faith and credit clause of the United States Constitution; and that New Jersey did not have jurisdiction to alter a part of a final decree of a judicial proceeding of a sister state, which had been rendered after appearance by the parties and full litigation of the issues (R. 19a). The Supreme Court of New Jersey decided that New Jersey had the power to alter and change a decretal portion of a judicial proceeding of the courts of a sister state wherein jurisdiction of the parties had been obtained and the issues litigated. The Supreme Court of New Jersey in its opinion held:

> "it is clear that subsequent to the entry of the Florida decree the courts of this state had equal jurisdiction with those of Florida to review the award of alimony and to determine whether or not under the present circumstances it is reasonable and just." (R. 55a)

The matter involved is of wide import and undecided by this court. May the alimony provisions of a decree of divorce in a court of one State having jurisdiction over the subject matter and parties be enlarged or decreased by the court of another State later securing jurisdiction over the parties?

No allegation was made that there had been any change in the circumstances of the husband, the defendant-petitioner herein.

Jurisdiction

1. Jurisdiction of this court is invoked under Title 28, United States Code, section 1257 which provides, in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> • • •
>
> "(3) By writ of certiorari * * * where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution * * * of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * * of the United States."

2. The Supreme Court of the State of New Jersey is the highest court of the state.

3. The judgment of which review is sought is a final judgment of the Supreme Court of New Jersey.

4. The judgment herein sought to be reviewed was filed on April 28, 1952. On May 26, 1952 the Supreme Court of New Jersey entered an order holding the mandate for 45 days to enable your petitioner to apply to this court for a writ of certiorari.

5. The Federal question of substance, which has been decided by the state court is that the constitutional guaranty contained in Article 4, Section 1 of the United States Constitution, that full faith and credit shall be given in each state to the judicial proceedings of every other state, has been infringed by the decision of the Supreme Court of the State of New Jersey that New Jersey, after the entry of the Florida decree, has equal jurisdiction with the courts of Florida to review the award of alimony. That decision

of the Supreme Court of the State of New Jersey is in conflict with the decisions of this court construing Article 4, Section 1 of the United States Constitution. *Bates* v. *Bodie*, 245 U. S. 520; *Yarborough* v. *Yarborough*, 290 U. S. 202; *Magnolia Petroleum Company* v. *Hunt*, 320 U. S. 430; *Sherrer* v. *Sherrer*, 334 U. S. 343; *Coe* v. *Coe*, 334 U. S. 378.

6. The Federal question was timely raised and considered. Upon the commencement of the action the petitioner filed a motion to dismiss the cause, specifically claiming the protection of the full faith and credit clause of the Constitution of the United States of America (R. 19a). The Supreme Court of the State of New Jersey in its opinion recites:

> "The defendant moved to dismiss the instant complaint on the grounds that the court lacked jurisdiction to entertain the action because the Florida decree was protected by the full faith and credit clause of the Federal Constitution; * * *" (R. 53a)

The Question Presented

May the alimony provisions of a decree of divorce in a court of one State having jurisdiction over the subject matter and parties be enlarged or decreased by the court of another State later securing jurisdiction over the parties?

Reasons Relied on for the Allowance of the Writ

The Supreme Court of New Jersey has decided that the courts of New Jersey have equal jurisdiction with the courts of Florida to review an award of alimony contained in a valid decree of divorce and to determine whether the award of alimony contained in a decree of divorce, made by the courts of Florida, is reasonable and just. This determination of the Supreme Court of New Jersey in effect holds that judgments of divorce in which alimony is awarded

are not judicial proceedings entitled to the protection of the full faith and credit clause of the Federal Constitution. The decision of the New Jersey Supreme Court is contrary to the decisions of this court in the following cases: *Barber* v. *Barber*, 62 U. S. 226; *Lynde* v. *Lynde*, 181 U. S. 183; *Bates* v. *Bodie*, 245 U. S. 520; *Yarborough* v. *Yarborough*, 290 U. S. 202; *Loughran* v. *Loughran*, 292 U. S. 216; *Barber* v. *Barber*, 323 U. S. 77; *Coe* v. *Coe*, 334 U. S. 378; *Sherrer* v. *Sherrer*, 334 U. S. 343; *Estin* v. *Estin*, 334 U. S. 541.

This court has held that judgments for divorce and alimony where jurisdiction has been secured of the parties are judicial proceedings which are entitled to full faith and credit. *Barber* v. *Barber*, 62 U. S. 226; *Yarborough* v. *Yarborough*, 290 U. S. 202; *Coe* v. *Coe*, 334 U. S. 378.

This recognition of the protection of the constitutional provision to such judicial proceedings does not preclude enforcement of past due alimony installments in other states. The continuing operation of the award is controlled by the laws of the state entering the decree. *Barber* v. *Barber*, 62 U. S. 226; *Lynde* v. *Lynde*, 181 U. S. 183; *Sistare* v. *Sistare*, 218 U. S. 1.

The Florida statute provides that the award may only be changed by the courts of Florida (Appendix D at p. 19 herein). This court in *Sutton* v. *Leib*, 96 L. Ed. 352, decided March 3, 1952, decided that the determination of the continuance of an alimony award was controlled by the construction of the law of Illinois whose courts had entered the decree.

The very basis of the rule that future installments are not enforceable rests upon the recognition of the continuing jurisdiction of the court which granted the award to alter or modify it.

The judgment of the Supreme Court of New Jersey manifestly disregards the right of the State of Florida to control its own decree and thus renders a decree of Florida

subject to the policy of another state in which the wife may serve the husband and bring an action for modification. There is a clear distinction between the right of another state to specifically enforce a decree which is subject to modification in the courts of the state which entered the decree and the right of another state to change a decree of the state having original jurisdiction. If full faith and credit shall be given in each state to the judicial proceedings of every other state, then New Jersey has no right while acknowledging the validity of a judicial proceeding of Florida, a decree of divorce, at the same time to step in and modify a portion of that judicial proceeding, to wit: the award of alimony. This is a judicial proceeding of Florida entitled to full faith and credit in every other state, and until changed by Florida, is not challengeable by collateral attack in other jurisdictions.

If the New Jersey decision is a correct statement of the law, then a provision for the payment of alimony in a decree of divorce of one State could be enlarged or diminished in 47 other States. The question arises, which of these 48 awards would be entitled to full faith and credit. It is respectfully submitted that once an award of alimony has been made it is a judicial proceeding within the full faith and credit clause and may only be changed in accordance with the law of the state which entered the award.

Your petitioner respectfully submits that the writ of certiorari should issue to the end that this Court may review the decisions of the Supreme Court of New Jersey and determine whether that court has deprived the petitioner of the right guaranteed by Article 4, Section 1 of the United States Constitution.

Respectfully submitted,

THEODORE D. PARSONS,
Attorney for Defendant-Petitioner.

JOHN J. CLANCY,
Of Counsel with Petitioner.

IN THE

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FLORENCE KRUMM ROBISON,

Plaintiff-Respondent,

vs.

EDWARD GEORGE ROBISON,

Defendant-Petitioner.

BRIEF IN SUPPORT OF PETITION

I.

Opinion Below

The opinion of the Supreme Court of the State of New Jersey is reported officially in 9 N. J. 288.

II.

Jurisdiction

Jurisdiction is fully covered in the foregoing petition, and in the interest of brevity is incorporated here by reference.

III.

Statement of the Case

A concise statement of the case is set forth in the foregoing petition under the heading "Statement of Matters Involved", and in the interest of brevity is adopted here by reference.

The other facts related to the dispute between petitioner and respondent, which were mentioned in the opinion of the court below, are the following:

On June 12, 1945 the plaintiff-respondent instituted suit for divorce in Dade County, Florida. The defendant-petitioner appeared and, by answer, admitted jurisdiction. A final decree of divorce was granted on July 9, 1945 after a final hearing at which both parties were represented by counsel. The decree dissolved the bonds of matrimony and directed the defendant to pay the plaintiff as alimony the sum of $28,600 of which $4,000 was to be paid three days after the decree and the balance at the rate of $200 a month. The plaintiff admitted that the agreement was merged in the divorce decree itself but contended that as to future alimony it is subject to modification in the courts of Florida and that it is not a final judgment entitled to full faith and credit under the Federal Constitution. The plaintiff did not allege that the financial status of the defendant had changed since the entry of the Florida decree and admitted that the financial provisions of that decree have been fully performed for the past six years.

IV.

Specification of Errors

1. The Supreme Court of New Jersey erred in holding that an award of alimony, which is a portion of an admittedly valid decree of divorce of the State of Florida, is not a judicial proceeding within the full faith and credit clause of the United States Constitution.

2. The Supreme Court of New Jersey erred in holding that the courts of New Jersey, notwithstanding that an award of the courts of Florida is being fully performed and there has been no change of circumstances, have equal jurisdiction with those of Florida to review the Florida award and to determine whether or not the Florida award is reasonable and just.

3. The Supreme Court of New Jersey erred in holding that the courts of New Jersey have jurisdiction to change a portion of a decree of the courts of Florida which provides for payments of alimony, notwithstanding the decree was made under a Florida Statute, which defined the method under which such decree might be changed.

V.

Summary of Argument

A. The Florida decree is a judicial proceeding entitled to full faith and credit in each state.

The action brought by the wife rested upon the premise that the decree of Florida dissolving the bonds of matrimony is valid and of full force and effect in New Jersey. The decree, in addition to dissolving the bonds of matrimony, awarded alimony to the wife. The entire decree is a judicial proceeding within Article 4, Section 1 of the United States Constitution.

The decision of this court in *Barber* v. *Barber*, 62 U. S. 226 has been repeatedly affirmed:

> "The parties to a cause for a divorce and for alimony are as much bound by a decree for both, which has been given by one of our state courts having jurisdiction of the subject matter and over the parties, as the same parties would be if the decree had been given in the Ecclesiastical Court of England. The decree in both is a judgment of record, and will be received as such by other courts. And such a judgment or decree, rendered in any State of the United States, the court having jurisdiction, will be carried into judgment in any other State, to have there the same binding force that it has in the State in which it was originally given."

This statement that the decree of divorce and the award of alimony are judgments of record and must be recognized in other states under the full faith and credit clause is the law today.

In *Lynde* v. *Lynde*, 181 U. S. 183, where New Jersey had made an award of alimony and suit had been brought in New York both to collect the amount then payable and to enforce future payments, the Court of Appeals of New York held that it would compel payment of the amount then due but that its decree would make no provision with respect to payments to be made in the future. The United States Supreme Court affirmed the New York Court of Appeals. In so doing Justice GRAY speaking for this court said:

> "The husband, as the record shows, having appeared generally in answer to the petition for alimony in the court of chancery in New Jersey, the decree of that court for alimony was binding upon him."

Justice GRAY then concluded the following statement:

> "The judgment is made a debt of record, not examinable upon its merits; but it does not carry

> with it, into another state, the efficacy of a judgment upon property or persons, to be enforced by execution."

In *Sistare* v. *Sistare*, 218 U. S. 1, this court disposed of the contention that *Lynde* v. *Lynde* overruled *Barber* v. *Barber* and held to the contrary. Justice WHITE cited with approval the foregoing quotation from *Barber* v. *Barber*. As a result of the analysis of the two cases, Justice WHITE made the following statement of law:

> "where a decree is rendered for alimony and is made payable in future instalments, the right to such instalments becomes absolute and vested upon becoming due, and is therefore protected by the full faith and credit clause, provided no modification of the decree has been made prior to the maturity of the instalments, since as declared in the Barber Case, 'alimony decreed to a wife in a divorce of separation from bed and board is as much of a debt of record, until the decree has been recalled, as any other judgment for money is.'"

In *Yarborough* v. *Yarborough*, 290 U. S. 202, a decree of Georgia providing for payments for the support of a minor child was held entitled to the protection of the full faith and credit clause.

> "He has fulfilled the duty which he owes her by the law of his domicile and the judgment of its court. Upon that judgment he is entitled to rely."

See also:

Bates v. *Bodie*, 245 U. S. 520;
Loughran v. *Loughran*, 292 U. S. 216;
Barber v. *Barber*, 323 U. S. 77;
Coe v. *Coe*, 334 U. S. 378;
Estin v. *Estin*, 334 U. S. 541.

When the award has been made by a court of competent jurisdiction, which has had the parties before it and has heard the issues, that award is conclusive of the rights of the parties and, as said in *Barber* v. *Barber, supra,* is entitled to recognition in all the states of the union. The decision of the New Jersey Supreme Court is based upon a confusion between the enforceability of a decree and the recognition of a decree. Under the decisions of this court the award for future payments is not enforceable because of the reserved right of modification. This does not mean that the decree must not be recognized. *Barber* v. *Barber, supra,* holds directly to the contrary.

B. The New Jersey Statute R.S. 2:50-37 does not give jurisdiction to New Jersey to invalidate, increase, or decrease an award of alimony made by Florida in a divorce decree wherein jurisdiction of the parties and issues was had, which decree was being fully performed and where there was no change of circumstances.

The Supreme Court of New Jersey held that New Jersey R.S. 2:50-37 vested New Jersey with the jurisdiction to change the Florida award.

Until the decision of the state court in the present case the purpose and application of the New Jersey Statute was well established. The statute was useful to secure an award of alimony where a decree had been obtained in another state which contained no award of alimony. It was also useful to compel performance specifically *in futuro* of the terms of awards of alimony decreed by other states when the defendant husband had removed to New Jersey and refused to abide by the terms of the decree. *Levy* v. *Levy,* 17 N. J. Misc. 324; *Isserman* v. *Isserman,* 23 N. J. Misc. 174; *Conwell* v. *Conwell,* 3 N. J. 266. New Jersey now says that this statute permits New Jer-

sey to increase or decrease and hence vacate awards of alimony made in other states (R. 55a).

F.S.A. 65.15 specifically limits the method in which a decree awarding support may be changed (Appendix D at p. 19 herein).

In *Sutton* v. *Leib*, decided March 3, 1952, reported unofficially in Volume 96, page 352 of the *Lawyers Edition Advance Opinions*, this court held that the determination of the effect of an annulled marriage ceremony upon an alimony award depended upon the laws of Illinois, the state which had made the alimony award. The right to alter and amend the Florida decree rests with the state of Florida. New Jersey cannot, by statute or otherwise, assume jurisdiction to alter the decree.

In *Estin* v. *Estin*, 334 U. S. 541, it was held that Nevada had no power to adjudicate the rights of a wife in a New York judgment. The wife had secured an award of separate maintenance in New York. The husband secured the Nevada divorce by constructive service and claimed that this divorce voided the New York judgment. Such claim was overruled by this court. It is submitted in the instant case that New Jersey has no statutory power to invade the jurisdiction of Florida and alter a Florida decree.

CONCLUSION

A novel proposition of far reaching significance is presented in this petition. May a wife who has secured a divorce and an award of alimony and who has accepted the benefits of the judgment for a period of upwards of six years, institute proceedings in other states to change the decree which she herself procured where jurisdiction was had of both parties and the subject matter?

It is respectfully submitted that the decree of divorce and award of alimony is protected by the full faith and credit clause of the United States Constitution and cannot be altered by a foreign state.

We therefore urge that a writ of certiorari should issue to the end that this Court may review the decision of the Supreme Court of New Jersey and determine whether that court has deprived petitioner of the right guaranteed by Article 4, Section 1 of the United States Constitution.

Respectfully submitted,

THEODORE D. PARSONS,
Attorney for Defendant-Petitioner.

JOHN J. CLANCY,
Of Counsel.

APPENDIX A

UNITED STATES CONSTITUTION, ARTICLE 4, SECTION 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

APPENDIX B

JUDICIAL CODE OF THE UNITED STATES,
28 U. S. C. A., SECTION 1738

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947.

APPENDIX C

NEW JERSEY STATUTE R.S. 2:50-37

"Pending a suit for divorce or nullity, brought in this State or elsewhere, or after judgment of divorce, whether obtained in this State or elsewhere, the court may make such order touching the alimony of the wife, and also touching the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just, and require reasonable security for the due observance of such orders, and upon neglect or refusal to give such reasonable security, as shall be required, or upon default in complying with the order, may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just, or enforce the performance of the said orders by such other lawful ways and means as is usual, and according to the source and practice of the Court; orders so made may be revised and altered by the court from time to time as circumstances may require."

APPENDIX D

FLORIDA STATUTE. F.S.A. 65:15 MODIFICATION, ALIMONY DECREES, AGREEMENTS, ETC.

"Whenever any husband and wife heretofore, or hereafter, shall have entered into any agreement providing for the payments for, or in lieu of, separate support, maintenance or alimony, whether in connection with any action for divorce or separate maintenance, or with any voluntary property settlement, or whenever any husband has pursuant to the decree of any court of competent jurisdiction been required to make to his wife any such payments, and the circumstances of the parties or the financial ability of the husband shall have been changed since the execution of such agreement, or the rendition of such decree, either party may apply to the circuit court of the circuit in which the parties, or either of them, shall have resided at the date of the execution of such agreement, or shall reside at the date of such application, or in which such agreement shall have been executed, or in which such decree shall have been rendered, for an order and judgment decreasing or increasing the amount of such separate support, maintenance or alimony, and the court, after giving both parties an opportunity to be heard, and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the husband, decreasing or increasing or confirming the amount of separate support, maintenance or alimony provided for in such agreement, or in such decree.

Thereafter the husband shall pay and be liable to pay the amount of separate support, maintenance or alimony directed in such order and judgment, and no other or further amount, and such agreement, or such decree, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this state,

shall be deemed to be, and shall be, modified accordingly, and it shall be unlawful to commence, or cause to be commenced as party, or attorney, or agent, or otherwise, in behalf of either party in any court any action or proceeding otherwise than as herein provided, nor shall any court have jurisdiction to entertain any action or proceeding otherwise than as herein provided to enforce the recovery of separate support, maintenance or alimony otherwise than pursuant to such order and judgment.

This section is declaratory of existing public policy and laws of this state, which is hereby affirmed and confirmed in conformance with the provisions hereof, and it shall be the duty of the judges of the circuit courts of this state to construe liberally the provisions hereof in order to effect the objects and purposes hereof and the public policy of the state as hereby declared."

No. 186

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IN THE

Supreme Court of the United States

October Term—1952

FLORENCE KRUMM ROBISON,
Plaintiff-Respondent,

vs.

EDWARD GEORGE ROBISON,
Defendant-Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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FLORENCE KRUMM ROBISON,

Plaintiff-Respondent,

vs.

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Defendant-Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Opinion Below

The opinion of the Supreme Court of the State of New Jersey is reported officially in 9 N. J. 288 and appears in defendant-petitioner's appendix (R. 52a) and need not be re-stated in full herein.

Jurisdiction

Defendant-petitioner contends that his rights have been violated under the Federal Constitution, Article 4, section #1, in that the Supreme Court of the State of New Jersey refused to give full faith and credit to that part of the alimony order incorporated in the Florida decree providing for future support of the plaintiff-respondent (R. 10a to R. 16a). The contention is without merit and the application for a Writ of Certiorari should be denied.

It is admitted that this Court has jurisdiction under Title 28 U. S. C., Section 1257 (3) in a cause which is meritorious.

Question Presented

Whether the defendant-petitioner was denied his Constitutional rights in violation of Article 4, section 1, of the Federal Constitution where the Supreme Court of the State of New Jersey refused to give full faith and credit to that portion of the Florida decree of divorce providing for the future support of the wife, the plaintiff respondent in this cause.

Counter-Statement of the Case

On June 12, 1945 plaintiff respondent instituted a suit for divorce in Dade County, Florida. The defendant petitioner appeared and by answer admitted jurisdiction. A final decree of divorce was granted July 9, 1945 after a final hearing at which both parties were represented by counsel. The decree dissolved the bonds of matrimony. Plaintiff respondent alleged in her amended complaint that on June 13, 1945, one day after the divorce suit was instituted the defendant petitioner caused a settlement agreement to be drawn and compelled and coerced the plaintiff respondent to execute the same in lieu of any alimony or property rights which she might have under the Florida laws (R. 20a to R. 22a; R. 13a to R. 16a). She alleged further in her amended complaint that the agreement incorporated in the Florida decree for divorce was and still is inequitable and unfair as to her, taking into consideration the financial status, income and property of the defendant-petitioner at the time the agreement was executed.

The plaintiff-respondent admitted that the decree insofar as it divorced the parties is a final judgment entitled to full faith and credit, but that the agreement which was merged into the divorce decree providing for the payment of alimony to the wife in the future was an order which was subject to modification by the Florida court, and under the Florida laws, and that, therefore, it was not a final judgment entitled to full faith and credit under the Federal Constitution, Article 4, section 1. Plaintiff-respondent further contended that she was without sufficient and adequate funds to maintain herself in accordance with the station in life to which she was accustomed prior to the divorce and that defendant-petitioner had adequate funds to provide for her.

Defendant-petitioner moved to dismiss the complaint on the grounds that the Court lacked jurisdiction to entertain the action, contending that the alimony order incorporated in the Florida decree for divorce providing for the future support of the wife was protected by the full faith and credit clause of the Federal Constitution because it was a final judgment.

Plaintiff-respondent claimed jurisdiction in the State of New Jersey by virtue of N.J.S.A. (R.S. 2:50-37) (R. 52a to R. 54a).

ARGUMENT IN OPPOSITION

The alimony order incorporated in the decree for divorce providing for the future support of the wife is not entitled to full faith and credit under the Federal Constitution, Article 4, section 1.

The order for the payment of alimony in the future, although the order is incorporated in the decree for divorce and merged therein, is not a final judgment entitled to full faith and credit under the Federal Constitution, Article 4, section 1, for the following reason:

The order is not a final judgment because it is subject to modification by a court order in the courts of Florida pursuant to its laws.

The defendant-petitioner first contends that the Florida decree must be granted full faith and credit in its entirety in the State of New Jersey.

Plaintiff-respondent agrees that this is sound insofar as it applies to that part of the decree severing the bonds of matrimony. We are dealing here not with past due payments of alimony under a decree for divorce of the State of Florida. If the matter in controversy involved past due installments of permanent alimony following a decree for divorce plaintiff-respondent admits that in such a situation a vested property right exists which can neither be modified nor annulled and is a final judgment entitled to full faith and credit. However, the issue involved presently concerns the matter of the payment of future alimony and as to alimony of this character under the common law and the Florida Statute F.S.A. Section 65.15 the decree may be modified, changed or vacated and as to this phase it has no finality. *Duss* v. *Duss*, 92 Fla. 1081, 111 So. 382 (Fla. Sup. Ct., 1926); *Van Loon* v. *Van Loon*, 132 Fla. 535, 182 So. 205 (Fla. Sup. Ct., 1938). As to whether or not it is entitled to full faith and credit depends upon whether or not it has the requisite finality to so entitle it. *Sistare* v. *Sistare*, 218 U. S. 1, 54 L. Ed. 905, 30 S. Ct. 682; *Barber* v. *Barber*, 323 U. S. 77, 89 L. Ed. 82, 65 S. Ct. 137 (1944); *Sutton* v. *Lied*, decided March 3, 1952 reported unofficially in Vol. 96, page 352 of the Lawyers Ed. Advanced Opinions, S. Ct. —; *Conwell* v. *Conwell*, 3 N. J. 266 (1949); *Frank* v. *Frank*, 7 N. J. 225 (1951).

Defendant-petitioner also argues that in a case such as the one at bar where a lump sum settlement has been decreed and payments made thereunder, the party seeking the modification must prove there was fraud in procuring the original decree. This contention has no merit.

The Supreme Court of Florida in *Cohn* v. *Mann*, 38 So. 2d, 465 (1949) had a case in which the petitioner without charging fraud sought a modification of a divorce decree which confirmed a property settlement where-under the petitioner agreed to pay his divorced wife certain weekly sums and in which the Chancellor had dismissed the petition. The Florida court found the Chancellor had erred in dismissing the petition, reversed and re-instated it.

Both parties appeared in the present action and neither party alleges that any fraud was perpetrated upon the Florida court with respect to the jurisdictional requirements. *Shearer* v. *Shearer*, 334 U. S. 343, 92 L. Ed. 1429, 68 S. Ct. 1087. *Coe* v. *Coe*, 334 U. S. 378, 92 L. Ed. 1451, 68 S. Ct. 1094.

The New Jersey Statutes R.S. 2:50-37 as amended 1938 by c 235 P.L. 1938 specifically confers upon the courts of the State of New Jersey jurisdiction to make orders pertaining to alimony after a decree for divorce whether obtained in this state or elsewhere. *Conwell* v. *Conwell*, 3 N. J. 266 (1949); *O'Loughlin* v. *O'Loughlin*, 6 N. J. 170 (1951). In the *Conwell* case the Supreme Court of the State of New Jersey said: "This enlargement of jurisdiction (the 1938 Amendment to R.S. 2:50-37) is in furtherance of the modern tendency to regard a cause of action for alimony or maintenance as complete in itself and independent of the cause of action for divorce and as being essentially personal and transitory in its nature." *Levy* v. *Levy*, 17 N. J. Misc. 324, 326 (Ch., 1939) and "It is proper deduction to conclude that motivating reasons for the enactment of the amendment of 1938 R.S. 2:50-37 were * * * to clear up any doubt with respect to the ability of our court (New Jersey Courts) to grant relief by way of support after a foreign decree with respect thereto has been entered."

The defendant-petitioner further argues that the Florida judgment is res adjudicata of the issues in the instant case, the plaintiff having accepted the moneys ordered to be paid thereunder and that the instant suit is a collateral attack upon that judgment. This argument has no substance and is without merit. The defendant-petitioner's argument is based upon the full faith and credit clause of the Federal Constitution, but it has no application herein. The New Jersey Court recognized the principle of comity between states and assumed jurisdiction thereunder. The rule of comity is grounded in the policy of avoiding conflicts of jurisdiction unless upon strong grounds and the general principle that the court which first acquired jurisdiction of the issue has precedence. *O'Loughlin* v. *O'Loughlin supra.* The New Jersey Supreme Court held: "It is clear that subsequent to the entry of the Florida decree the Courts of the State of New Jersey had equal jurisdiction with those of Florida to review the award of alimony and to determine whether or not under the present circumstances it is reasonable and just." The New Jersey Supreme Court further held that this action does not constitute an invasion of the territory of the foreign sovereign. It is respectfully submitted that this is a correct statement of the law and particularly where the review of the reasonableness of the matter of alimony for the wife concerns her future support and not past due installments.

The defendant-petitioner misconceives the issue which was tried and determined in the Courts of the State of New Jersey. The cases which he cites in his brief have no application to the matter in issue and are not controlling.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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